



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2013, under Wis. Stat. § 227.42, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 17, 2013, in Milwaukee, Wisconsin.

No one from the Department of Health Services made an official appearance at Petitioner's hearing and no one from the Department of Health Services submitted any documentation in anticipation of the hearing. However, with Petitioner's permission, ALJ Ishii contacted [REDACTED] State SSI Analyst to obtain further information about Petitioner's case.

On December 17, 2013, [REDACTED] sent ALJ Ishii an e-mail and attachments (Exhibits 3 and 4), stating that there was an overpayment of \$967.56, of which \$939.28 was recouped in error. [REDACTED] indicated that the \$939.28 was refunded to Petitioner.

The hearing was continued to January 14, 2014, at Milwaukee, Wisconsin. Again, no one from the Department of Health Services appeared at the hearing or submitted documentation in anticipation of the hearing. At this time Petitioner produced four letters from the Department of Health Services dated January 6, 2014 (Exhibit 5), that provided information that conflicted with what [REDACTED] stated in her e-mail. During the hearing, ALJ Ishii called [REDACTED], who was unable to provide an explanation for the letters, because she had been unaware of them.

On January 15, 2014, copies of the four letters were e-mailed to [REDACTED]. The record was held open until January 21, 2014 to give [REDACTED] an opportunity to investigate the letters and to submit a ledger showing, month by month, how much was deducted from the Petitioner's Care Taker supplement benefits and how much was refunded to the Petitioner. No such documentation or additional response was received by the designated deadline, although [REDACTED] did submit a copy of the overpayment notice, which was marked as Exhibit 6 and entered into the record.

It should be noted that ALJ Ishii made further inquiries by e-mail on February 3, 2014, by voice mail on February 6, 2014, and by e-mail and voicemail on February 18, 2014. For reasons not made clear in the record, the Department of Health Services did not respond.

The issue for determination is whether the Department of Health Services still owes Petitioner money for an overpayment that was either waived or recouped in error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No one

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On September 23, 2010, the Department of Health Services (DHS) sent Petitioner a Notice of State SSI and/or Caretaker Supplement Overpayment, indicating that she was overpaid \$967.56 in benefits for the months of May 2010 and June 2010. The notice further indicated that the agency would begin recouping the overpayment on October 17, 2010. (Exhibit 6)
3. The agency recouped payments from Petitioner from October 2010 through October 2013. (Exhibits 5 and 6)
4. The agency later waived the overpayment or determined the overpayment to have been imposed in error and refunded to Petitioner \$929.28. (Statement of [REDACTED]; testimony of Petitioner)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 28, 2013. The Petitioner asserted that DHS erroneously recouped \$2,167.00 and asked that she be refunded the full amount of the recoupment. (Exhibit 1)

DISCUSSION

Beginning January 1, 1998, with the advent of the Wisconsin Works (W-2) program, AFDC ceased to exist in this state. Since W-2 is a work program, and SSI recipients by definition are unable to work, SSI recipients cannot qualify for W-2. The state thus implemented the Caretaker Supplement Program, which currently pays SSI recipient parents \$250 per month for one child, and \$150 per month for each additional child. The program is mandated by Wis. Stat., §49.775. Also SSI Eligibility Handbook Sec. 4.1.7

To be eligible for the CTS payments the following criteria must be met: (1) the caretaker must be an SSI recipient, or if both parents are in the home, both parents must receive SSI; (2) the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and (3) the child or children must not receive SSI payments themselves. Wis. Stat. §49.775(2)(a), (b) and (c); CTS Handbook, Appendix 1.1.

If SSI / Caretaker Supplement benefits have been incorrectly paid under Wis. Stats. Chapters 48 or 49, the agency, "may seek recovery from the eligible individual ...The total amount recovered may not exceed the amount of incorrectly paid benefits, and shall be offset by any amounts that are owed the eligible individual..." Wis. Admin. Code §DHS 2.04 (1)(a)

[REDACTED]

“Recovery of incorrectly paid benefits may be waived when the recovery of the overpayment is considered to be against equity or when it causes undue hardship, or the recovery impedes efficient and effective administration of programs due to the small amount involved or the age of the account.” Wis. Admin. Code §DHS 2.05

“Except as provided under s. DHS 2.05, recovery of incorrectly paid benefits from an individual currently eligible to receive benefits may be made by reducing the amount of the individual's benefits by no more than 10% each month until the full amount of the incorrectly paid benefits is recovered, unless the individual requests a larger percentage deduction. A written notice of intent to recover shall be provided to the individual as required under sub. (6).” Wis. Admin. Code §DHS 2.04 (3) *See also* Wis. Admin. Code §DHS 2.04 (5)(a), which allows a larger percentage deduction from current benefits, if requested by the recipient.

Wis. Admin. Code §DHS 2.04(6) states:

- (a) Except as provided under s. [DHS 2.05](#), no recovery may be made unless at least 20 days prior written notice of the intention to recover some or all of the amount determined to have been overpaid. The notice shall specify all of the following:
1. The months for which benefits were incorrectly paid.
 2. The amount of the intended recovery.
 3. The amount, if any, by which the amount owed was offset by any applicable previous underpayments of benefits to the individual or entity.
 4. A summary of the basis for the finding that incorrectly paid benefits were made.
 5. The effective date of the intended action.
 6. The right to appeal the intended action as provided in ch. [HA 3](#) and ch. [227](#), Stats.
- (b) The notice under par. (a) shall also include notice of a right to appeal the incorrectly paid benefit determination if a right to appeal that determination was not previously provided.

“An action taken under s. DHS 2.04(1) of (2) is subject to review under ch. 227, Stats., and ch. HA3.” Wis. Admin. Code §DHS 2.06(1). If an individual wishes to contest an overpayment, the individual, “shall, within 45 calendar days after receipt of the notice of intent to recover, submit a written request for a hearing on the matter to the department of administration’s division of hearings and appeals.” Wis. Admin. Code §DHS 2.06(2)(a)

TIMELINESS

The Division of Hearings and Appeals does not have jurisdiction to hear the merits of an appeal, if it is untimely; that is filed too late. If the Petitioner were contesting the initial overpayment determination, her appeal would be untimely per Wis. Admin. Code §DHS 2.06(20)(a) above. However, in the case at hand, the Petitioner does not contest the fact that she was charged with an overpayment of \$967.56 for May and June 2010. The agency does not contest the fact that it deducted 10% of Petitioner’s current benefits to recoup the overpayment, nor does the agency contest the fact that whatever moneys it recouped from Petitioner should have been refunded to the Petitioner. The parties disagreed with how much the agency actually recouped from the Petitioner through 2013.

Wis. Admin. Code §HA 3.03(1)€ and (e) states that, “any person apply for or receiving...social services or public assistance may appeal any of the following administrative actions of the department or an agency:...Reduction, suspension or termination of program benefits...a change in the form of payment of benefits...” The continued deduction of benefits to recoup an overpayment that had long ago been

██████████ satisfied and was later waived or determined to have been recouped in error, would constitute a reduction in benefits. As such an appeal of such action would need to be filed within 45 days of adverse action. Wis. Admin. Code §HA 3.05(3)

As best can be determined, the last deduction from Petitioner's benefits was sometime in October 2013. Petitioner's appeal was filed on October 28, 2013. (See Exhibits 1 and 5) Consequently, it is found that Petitioner's appeal is timely.

HOW MUCH WAS RECOUPED FROM PETITIONER?

██████████ submitted what she indicated is a screen showing the overpayment amounts charged to the Petitioner. (See Exhibit 4, pg. 2) That screen shows an AR set up dated of November 9, 2009 with three \$400 recovery amounts. That screen also shows an AR set up date of September 22, 2010 with two \$400 recovery amounts and two \$83.78 amounts.

██████████ indicated that the three, \$400 amounts dated November 9, 2009 were entered because the agency was transitioning to a new computer system and that the three, \$400 amounts were not actual overpayments. That may be so, but that does answer the question of what amounts were actually recouped from Petitioner and when. Further, the fact that phantom overpayment amounts were entered into Petitioner's case actually provides an explanation for why the agency might have erroneously recouped additional money from the Petitioner.

Based upon Exhibit 4, pg. 2, the total overpayment amount entered into DHS's database was \$2167.56.

2010 RECOUPMENT

The first letter from "██████████" at the State SSI Unit indicates that at the end of 2010, the balance of Petitioner's overpayment was \$1587.00. (Exhibit 5, pg. 1) So, in 2010, the agency recouped \$580.56 from Petitioner. ($\$2167.56 - \$1587.00 = \$580.56$)

This is a bit curious, given that the overpayment notice indicated that the recoupment was not to start until October 2010. One would have expected the recoupment for 2010 to have been $\$48.38 \times 3 \text{ months} = \145.14 . However, the agency has provided no documentation showing the actual transactions for 2010, so the best evidence in the record regarding how much was recouped from Petitioner in 2010 is the letter from ██████████.

2011 RECOUPMENT

The second letter from ██████████ indicates that at the end of 2011, Petitioner had an overpayment balance of \$1006.44, which means that in 2011, the agency recouped \$580.56 from the Petitioner ($\$1587.00 - \$1006.44 = \$580.56$). See Exhibit 5, pg. 2

2012 RECOUPMENT

The third letter from ██████████ indicates that at the end of 2012, the Petitioner had an overpayment balance of \$470.88. (Exhibit 5, pg. 3) This means that in 2012, the agency recouped \$535.56 ($\$1006.44 - \470.88)

2013 RECOUPMENT

The fourth letter from ██████████ indicates that at the end of 2013, the Petitioner no longer had an overpayment balance, and that no deductions were made in November 2013 and December 2013.

However, [REDACTED]'s letter indicates that between January 2013 and October 2012, the agency deducted \$33.38 per month from Petitioner's benefits, which would mean a recoupment of \$333.80 (\$33.38 x 10 months = \$333.80).

REFUND AMOUNT

In summary, it appears that the agency recouped \$2030.48 (\$580.56 + \$580.56 + \$535.56 + \$333.80) from the Petitioner.

The Petitioner did not contest the fact that the agency refunded \$929.28 to her. Consequently, \$1101.20 remains to be refunded to Petitioner. (\$1101.20 - \$929.28 = \$1101.20)

CONCLUSIONS OF LAW

The Department of Health Services still owes Petitioner money from overpayment that was either waived or recouped in error and for money collected beyond the stated overpayment amount.

THEREFORE, it is

ORDERED

That DHS refund to Petitioner \$1101.20. DHS shall take all administrative steps necessary to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

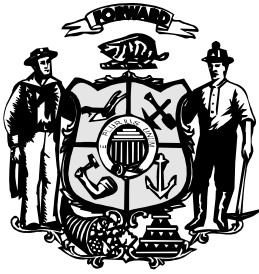
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of March, 2014

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 10, 2014.

Division of Health Care Access and Accountability
State SSI